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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1453

JOHN BREWSTER,

Appellant,

VS.

CITY OF CARBONDALE,

Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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No.

JOHN BREWSTER,

Appellant,

vs.

CITY OF CARBONDALE,

Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

John Brewster, the appellant, appeals from the final judgment of the Supreme Court of Illinois, dated December 20, 1979, reversing the judgment of the Circuit Court of Jackson County, Illinois, and holding that Ill. Rev. Stat. Ch. 24, § 11-80-13 (1977) and the City of Carbondale ordinance enacted pursuant to that statute (Revised Code of City of Carbondale, Article XII, §§ 17-12-1 to 17-12-6) are not unconstitutional, and specifically that they are not violative of appellant's rights of due process and equal protection guaranteed by the Fourteenth Amendment of the Constitution of the United States.

OPINION BELOW

The opinion of the Supreme Court of Illinois, which appears in the appendix hereto (App. 1a-8a), is reported at 78 Ill. 2d 111, 34 Ill. Dec. 838, 398 N.E.2d 829 (1979).

JURISDICTION

On January 11, 1979, the City of Carbondale issued to John Brewster, one of its residents, a "non-traffic complaint and notice to appeal" alleging his violation of a city ordinance requiring certain persons to clear snow and ice from city sidewalks abutting their property. On motion by Brewster, the Circuit Court of Jackson County, Illinois dismissed the complaint on the ground that the ordinance was unconstitutional. The City appealed directly to the Illinois Supreme Court.

On December 20, 1979, the Illinois Supreme Court held that the ordinance and the Illinois statute which authorized it were constitutional, and reversed the judgment of the Circuit Court (two Justices dissenting).

Notice of appeal to this Court (App. 11a-12a) was filed in the Illinois Supreme Court on March 12, 1980 and in the Circuit Court of Jackson County, Illinois on March 13, 1980.

This appeal is brought pursuant to 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1:

> . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes, Ch. 24, § 11-80-13 (1977):

> The corporate authorities of each municipality may regulate the use of sidewalks, the construction, repair, and use of openings in sidewalks, and all vaults and structures thereon and thereunder, including telephone booths, and may require the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions.

Revised Code of City of Carbondale, Article XII:

Article XII. Responsibility for Removal of Snow and Ice.

Section 17-12-1. Definitions.

> The following definitions shall apply in the interpretation and enforcement of this article:
>
> A. "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purposes of vehicular travel.
>
> B. "Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.
>
> C. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

D. "Business Day" is any day not a Sunday or a national holiday.

E. "Business Hours" are the hours between 8:00 a.m. and 5:00 p.m. on any business day. (Ord. No. 78-10)

Sec. 17-12-2. Snow and Ice to be Removed from Sidewalks by Private Persons.

A. Every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the City fronting or abutting on a paved sidewalks, whether as owner, tenant, occupant, lessee, or otherwise, shall remove and clear away, or cause to be removed and cleared away, snow and ice from a path of at least thirty inches in width from so much of said sidewalk as is in front of or abuts on said building or lot of land.

1. Except as provided in subsection B hereof, snow and ice shall be so removed from sidewalks in all business districts within the City by twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain.

2. Except as provided in subsection B hereof, snow and ice shall be so removed from all other sidewalks within the City twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain.

B. However, in the event snow and ice on a sidewalk has become so hard that it cannot be removed without likelihood of damage to the sidewalk, the person or entity charged with its removal shall, within the time mentioned in subsection A hereof, cause enough sand or other abrasive to be put on the sidewalk to make travel thereon reasonably safe; and shall then, as soon thereafter as weather permits, cause a path in said sidewalk of at least thirty inches in width to be thoroughly cleaned. (Ord. No. 78-10)

Sec. 17-12-3. Removal of Snow and Ice from Public Transportation Systems.

Every person, partnership, corporation, joint-stock company, or syndicate operating a public transportation system within the City employing motor buses, trackless trolleys, trains, or street cars shall remove and clear away, or cause to be removed and cleared away, snow and ice from its passenger loading and unloading areas and its tracks, if any. Snow and ice from its passenger loading and unloading areas shall be removed and cleared away within twenty-four (24) hours after the cessation of any fall of snow, sleet, or freezing rain, except that if the snow and ice has become so hard that it cannot be removed without likelihood of damage to the underlying surface, such operator shall, within the said twenty-four (24) hour period, cause enough sand or other abrasive to be put on the passenger loading and unloading area to make walking thereon reasonably safe. He shall then, as soon thereafter as weather permits, cause said area to be thoroughly cleaned. (Ord. No. 78-10)

Sec. 17-12-4. Depositing of Snow and Ice Restricted.

No person, partnership, corporation, joint-stock company, or syndicate shall deposit or cause to be deposited any snow and ice on or against a fire hydrant or on any sidewalk, roadway, or loading or unloading areas of a public transportation system, except that snow and ice may be windrowed on public roadways incident to the cleaning thereof or windrowed on curbs incident to the cleaning of sidewalks in business districts. (Ord. No. 78-10)

Sec. 17-12-5. City Manager's Authority.

The City Manager of the City of Carbondale is hereby authorized on behalf of the City to cause sidewalks to be cleared upon the request of the person or entity charged with snow and ice removal. Any person or entity whose sidewalk is cleared pur-

suant to this section shall reimburse the City for the costs of such clearing. (Ord. No. 78-10)

Sec. 17-12-6. Penalties.

Any person, partnership, corporation, joint-stock company, or syndicate who violates any provision of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not less than $10.00 and not exceeding $500.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Ord. No. 78-10)

QUESTION PRESENTED

The question presented is whether the City of Carbondale ordinance set forth above (and its enabling statute) are violative of appellant Brewster's rights guaranteed by the Fourteenth Amendment of the Constitution of the United States not to be deprived by the state of his liberty or property without due process of law nor denied the equal protection of the laws, in that the ordinance in question unreasonably and arbitrarily requires him to perform (or to procure the performance of) recurring services for the city without compensation, and to expend his labor or money to perform a public function and to maintain public property at his own expense.

STATEMENT OF THE CASE

On January 12, 1979, the City of Carbondale issued to John Brewster a "non-traffic complaint and notice to appear," alleging that on January 11, 1979, he had violated Section 17-12-2 of the Revised Code of the City of Carbondale by failing to remove snow from the sidewalk abutting his premises at 403 South Poplar within 24 hours after a particular snowfall had ceased. Brewster appeared and moved to dismiss the complaint on the ground, *inter alia*, that the ordinance violated the Fourteenth Amendment to the United States Constitution.

On February 9, 1979, the Circuit Court entered an order dismissing the complaint and holding the ordinance and statute invalid. The order acknowledged Brewster's contention that the ordinance violated the federal Constitution, but rested primarily on *Gridley v. City of Bloomington*, 88 Ill. 554, 30 Am. Rep. 566 (1878) and cases following it which had invalidated a similar ordinance on unspecified constitutional grounds.

The City appealed directly to the Illinois Supreme Court. There, the City argued that the ordinance was a valid exercise of the police power; Brewster argued that the ordinance was invalid on several grounds, including Fourteenth Amendment grounds.

In an opinion dated December 20, 1979, the Illinois Supreme Court reversed, holding that the ordinance and its enabling statute were valid as a proper exercise of the police power. In doing so, it expressly overruled the *Gridley* case and *City of Chicago v. O'Brien*, 111 Ill. 532, 53 Am. Rep. 640 (1884), which had followed *Gridley* and had also rested its decision on due process grounds. Two Justices dissented, concluding that the ordinance was not a proper exercise of the police power and therefore was violative of defendant's due process rights.

THE QUESTION IS SUBSTANTIAL

The question presented here is whether the state, under penalty of criminal sanctions, can require persons who happen to occupy property which abuts a public way upon which the city has seen fit to construct a public sidewalk to maintain that sidewalk clear of ice and snow. All of the city's innocuous-sounding "police power" arguments cannot obscure the fact that the city has, by ordinance, conscripted the labor of a group of citizens who happen to live next to a public way. This ordinance compels citizens against their will to work for the city, without compensation. It requires an arbitrarily selected minority to donate their manual labor to assist in the maintenance of public property.

Neither this novel issue, nor any like it that we can find, has ever been presented to this Court. But the issue it presents is one of far-reaching significance. A large number of municipalities already have such ordinances; this in itself means that this case involves hundreds of thousands of man-hours of labor forced upon citizens by their government, without compensation and with no corresponding benefit to those particular citizens. Moreover, if government can require its citizens to clear snow and ice from public property, it can require other forms of uncompensated labor for the "public good." Using the same rationale, certain citizens could be required to repair and maintain the public street itself, or even the courthouse steps.

It is not enough to say that these decisions can be left to the political or legislative processes. This Court and others have long recognized that one of the most sacred functions of the Constitution, and especially the due

process and equal protection clauses, is to protect those in the minority from arbitrary and unreasonable burdens imposed by the majority. The duty imposed by the statute here in question is likely to fall on just such a minority. This is particularly true in a community such as Carbondale, a relatively small town housing a large university, where a relatively large proportion of the population consists of tenants who reside in multiple unit dwellings. Moreover, if the burden imposed is unreasonable, surely it cannot be justified on the ground that it has been imposed by the will of the majority and such unreasonable burdens are permissible.

Under the decisions of this Court over the last several decades, the standard to be applied in reviewing the constitutionality of this legislation is not free from doubt. *See, e.g., Moore v. City of East Cleveland*, 431 U.S. 494 (1977); Lupu, *Untangling the Strands of the Fourteenth Amendment*, 77 Mich. L. Rev. 981 (1979); Reznick, *Empiricism and the Principle of Conditions in the Evolution of the Police Power: A Model for Definitional Scrutiny*, 1978 Wash. U. L.Q. 1; Preston & Mehlman, *The Due Process Clause As A Limitation On the Reach of State Legislation: An Historical and Analytical Examination of Substantive Due Process*, 8 U. Balt. L. Rev. 1 (1978). A full discussion of this problem necessarily must await briefs on the merits in this case. For the time being, however, it will have to suffice to suggest that there are at least two possible approaches to this problem.

First, if the legislation here involved is found to infringe upon a fundamental liberty interest, it must withstand strict scrutiny of its fairness and reasonableness. We submit that such a fundamental liberty interest is involved. This case involves legislation

which mandates labor by private citizens on a regular, recurring basis for the purpose of maintaining public property. (It is undisputed, as the opinion below acknowledges, that in Illinois sidewalks are public property and are deemed to be a part of the street.) Moreover, the burden of the ordinance is not limited to the owner of property adjoining the public way; its sweep extends to "[e]very person . . . in charge or control of any building or lot of land within the City fronting or abutting on a paved sidewalks [sic], whether as owner, tenant, occupant, lessee, or otherwise . . . ." Thus, the effect of the ordinance is to require every person who happens to own or reside on land which abuts a public sidewalk to purchase the necessary equipment and remain available on 24-hour notice during the winter months of every year and then to perform the manual labor of clearing the walk each and every time any amount of snow or ice is deposited on the public way; or, in the alternative, to contract for such services and then remain responsible as an insurer for the proper performance of that contract. Clearly, this responsibility burdens the individual citizen's liberty to at least as great an extent as legislation which this Court has struck down as infringing interests such as privacy, choice of residence, and freedom from corporal punishment. *See, e.g., Moore v. City of East Cleveland*, 431 U.S. 494 (1977); Lupu, *Untangling the Strands of the Fourteenth Amendment*, 77 Mich. L. Rev. 981 (1979).

Second, even if the legislation here involved is viewed as infringing less-than-fundamental property or liberty interests, this does not mean that it enjoys a conclusive presumption of reasonableness. Some sort of balancing test must be applied, which falls between strict scrutiny and no scrutiny at all. We submit that even if this statute is given the benefit of some degree of presumption of constitutionality, careful consideration will lead this Court to conclude that its unreasonableness outweighs any possible benefit to the public welfare sufficient to justify it.

The burden of this legislation falls arbitrarily and unevenly. Only those citizens who happen to reside adjoining the public way are burdened; the benefit inures to all who use that public way. And the burden falls heaviest and with greatest inequity on the poor, the elderly and the handicapped, who either cannot do the work or cannot afford to have it done, or both. Indeed, the elderly and those in poor health who cannot afford to contract to have the work done are required to risk their very lives in engaging in such strenuous labor, or else subject themselves to criminal penalties. Or, under § 17-12-5 of the ordinance, the City Manager is empowered to cause one's sidewalks to be cleared "upon the request of the person or entity charged with snow and ice removal" (presumably, another city employee or agency) and then obtain reimbursement from the abutting resident. For the person physically unable to remove the snow, this amounts to a tax or special assessment which has none of the safeguards by which the taxing power is ordinarily limited.

The arbitrariness of the burden is magnified by the fact that the fall of snow is something over which the occupant has no control and which he did nothing to cause. He is powerless to prevent its accumulation upon the city's sidewalks; the time and amount of its arrival is entirely out of his hands. Yet he is compelled by the state to stand ready to labor, seven days a week if need be, whenever it occurs. His travel out of town, whether for business or pleasure, is burdened or made impossible (if he cannot arrange for such work) by his duty to stand by in readiness for each snowfall or ice storm.

The burden is further increased by the fact that what is being required is the maintenance of a public way—clearly a public function. This is exactly the kind of service for which the government is organized. Public property should be maintained by public revenues, which are equitably apportioned among *all* of the taxpayers in the community. Surely no law can be justified which places the burden of maintaining public property on a particular subgroup of citizens whose only connection with that property is geographic.

The purpose of this legislation is, no doubt, to benefit the public safety and convenience in facilitating pedestrian travel on sidewalks during the winter months. Whether such legislation achieves any significant increment in this direction, over and above what clearing people would voluntarily do even in its absence, is problematical. But even assuming that such an increment exists, it cannot be sufficient to outweigh the unreasonable and arbitrary burden previously discussed. Moreover, such public benefit as might exist is further reduced by the fact that the method selected by the city to accomplish this goal is unnecessarily inefficient and costly. If its goal is to have all of its sidewalks promptly and properly cleaned, the city, by making use of snow removal equipment appropriate to the job, can achieve economies of time and cost wholly beyond the means of the average resident with his snow shovel or whatever. (If motorized snow blowers become the norm, this legislation would require hundreds, perhaps thousands of individuals to purchase such equipment to do the same job which the city could accomplish with only a few.) This law conscripts hours of the time of individual citizens for a task which could be accomplished in minutes by the use of municipally-owned equipment and full-time municipal employees. The staggering inefficiency and extra cost of the method selected must be added to the burden already shown.

That there is no necessity to delegate public works to private individuals, if not manifest in common sense, is demonstrated by the ordinance itself, which provides that the city may do the work if the hapless resident is unwilling or unable to do the work himself. As the court noted in *McGuire v. District of Columbia*, 24 App. D.C. 22, 28-29 (1904):

> This very enactment provides that the municipality shall do the work required . . . in the event that individual citizens should fail to do it, and it is not apparent why, with proper organization, it should not do it in the first instance as well as in the last.

Moreover, in time of genuine emergency, such as a blizzard of unusual proportions, natural disaster, or war, the state would not call upon its elderly, feeble and handicapped. The city has failed to show sufficient necessity to require its citizens to choose between criminal sanctions and the risk of a premature heart attack, so that the city will be spared the trouble of performing the task which is properly the city's in the first place.

Given the fact that maintenance of the streets and sidewalks is a public function which the city itself is well able to perform, and to perform better and more economically than individual citizens, the attempt to delegate this function to those citizens whose property happens to abut these streets and sidewalks is clearly arbitrary and unreasonable, and bears no rational relation to the end sought to be achieved. The cost, both in economic terms and to individual liberties, is so disproportionate to the result that it is violative of due process—or, stated differently, is an improper attempt to exercise the state's police power.

Removal of snow and ice from public sidewalks by individual citizens is clearly an unreasonable alternative in the three relevant categories: necessity, cost, and effectiveness. See Ratner, *The Function of The Due Process Clause*, 116 U. Pa. L. Rev. 1048, 1089-92 (1968). The absence of necessity for the method chosen is obvious. The lesser cost of municipal removal is also clear. And perhaps most importantly, the effectiveness of municipal snow removal is much greater than that of private removal. The absence of vacationing homeowners, the financial condition of less affluent property owners, the inability of the elderly and the handicapped to comply, and the likelihood of arbitrary enforcement all make the method selected relatively ineffective.

Thus, the importance of the question presented in this case is evident. Legislation such as this touches the lives of hundreds of thousands; it is a significant governmental intrusion which burdens their daily lives throughout the winter months, with no corresponding public benefit or necessity. And it presents an issue upon which, so far as we can determine, this Court has never passed. Indeed, so far as we can find, there is no case decided by this Court which is sufficiently analogous to provide guidance in resolving this and similar issues. The question is ripe and proper for this Court's determination.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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March 17, 1980

APPENDIX

Citation: 78 Ill. 2d 111, 34 Ill. Dec. 838,
398 N.E. 2d 829.

No. 51711 — Supreme Court of Illinois

CITY OF CARBONDALE, a municipal corporation,

Plaintiff-Appellant,

v.

JOHN BREWSTER,

Defendant-Appellee.

Appeal from Circuit Court, Jackson County

Opinion filed December 20, 1979

MR. JUSTICE MORAN delivered the opinion of the court:

An ordinance enacted by the city of Carbondale (plaintiff) requires, under threat of fine, that persons in control of property fronting or abutting on paved sidewalks remove snow and ice from such sidewalks or, if the snow and ice is too hard for removal, to cover them with abrasive materials within 24 hours after a snowfall or freezing precipitation. An Illinois statute allows municipalities to require the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions. (Ill. Rev. Stat. 1977, ch. 24, par. 11-80-13.) In dismissing a complaint against defendant for violation

of the Carbondale ordinance, the circuit court of Jackson County held the statute and ordinance invalid. Plaintiff has appealed directly to this court pursuant to Rule 302(a). 58 Ill. 2d R. 302(a).

Plaintiff contends initially that the circuit court erred because the basis for its holding had not been raised and, in fact, had been waived by defendant. The circuit court, in its written order, expressly based its decision on *Gridley v. City of Bloomington* (1878), 88 Ill. 554, wherein the court struck down a similar municipal ordinance, and held that the ordinance could not be upheld either under the principle according to which assessments are made or under the police power. (88 Ill. 554, 557.) We note that, in his motion to dismiss, defendant contended *inter alia* that the ordinance is an unreasonable exercise of the police power. It is evident, therefore, that this contention of the plaintiff is without merit.

Plaintiff next contends that the statute and ordinance are valid exercises of the police power. As stated, the *Gridley* court held the enactment of such an ordinance to be an invalid exercise of police power. This holding was adhered to shortly thereafter by a divided court in *City of Chicago v. O'Brien* (1884), 111 Ill. 532, which had before it precisely the same issue. Recently, the concept of police power in Illinois has been more thoroughly considered.

> "The police power is an attribute of sovereignty inherent in every government. It has been reserved to all the States by the constitution of the United States. [Citations.] While it is not without limitation and may not be exercised arbitrarily, the legislatures of the States have broad discretion in the passage of statutes in its exercise. [Citation.] When the legislature has considered a problem and enacted legislation thereon, the act is presumptively a valid exercise of the power and the burden rests upon the one assailing the statute to show that it is without reasonable basis and entirely arbitrary. [Citations.]" (*Memorial Gardens Association, Inc. v. Smith* (1959), 16 Ill. 2d 116, 123.)

The police power may be exercised to protect the public health, safety, morals, and general welfare or convenience. (*Sherman-Reynolds, Inc. v. Mahin* (1970), 47 Ill. 2d 323, 326; *Clarke v. Storchak* (1943), 384 Ill. 564, 577.) To be a valid exercise of police power, the legislation must bear a reasonable relationship to one of the foregoing interests which is sought to be protected, and the means adopted must constitute a reasonable method to accomplish such objective. (*Sherman-Reynolds, Inc. v. Mahin* (1970), 47 Ill. 2d 323, 327; *Schuringa v. City of Chicago* (1964), 30 Ill. 2d 504, 509.) Although the determination of reasonableness is a matter for the court, the legislature has broad discretion to determine not only what the interests of the public welfare require but what measures are necessary to secure such interest. (*Memorial Gardens Association, Inc. v. Smith* (1959), 16 Ill. 2d 116, 127; *Clarke* v. *Storchak* (1943), 384 Ill. 564, 577.) The court will not disturb a police regulation merely where there is room for a difference of opinion as to its wisdom, necessity and expediency. (*Schuringa v. City of Chicago* (1964), 30 Ill. 2d 504, 515.) The reasonableness requirement also applies to ordinances passed pursuant to legislative authority. *Petterson v. City of Naperville* (1956), 9 Ill. 2d 233, 244.

As it relates to real property, the police power is the vehicle by which the free and unencumbered use thereof may be adversely affected. Thus, a zoning ordinance will be upheld as a proper exercise of the police power if it bears any substantial relationship to the public health, safety, comfort or welfare. (*E.g., La Grange State Bank v. County of Cook* (1979), 75 Ill. 2d 301, 307.) Similarly, a residential land subdivider may properly be required, as a condition to approval of the plat, to provide curb and gutter and suitable storm-water-drainage facilities (*Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233), or to make contributions of land, or money in lieu of land, to be used for school and park sites (*Krughoff v. City of Naperville* (1977), 68 Ill. 2d 352). As the court in *Petterson* stated:

> "The privilege of the individual to use his property as he pleases is subject always to a legitimate exercise of

> the police power under which new burdens may be imposed upon property and new restrictions placed on its use when the public welfare demands." *Petterson v. City of Naperville* (1956), 9 Ill. 2d 233, 247.

The *Gridley* decision was based largely upon the court's observation that a lot owner has no greater interest in the street or sidewalk abutting his property than any other member of the municipality. This court has since reiterated that the sidewalk is considered a part of the street which has been set aside for pedestrian use. (*Lansing v. County of McLean* (1978), 69 Ill. 2d 562, 572; *City of Elmhurst v. Buettgen* (1946), 394 Ill. 248, 252.) Continuing with this notion, the court, in *O'Brien,* denounced a snow-removal ordinance as laying a purely public burden upon a private individual, without providing for an exercise of the right of eminent domain or proper proceedings to enforce special assessments or special taxation. *City of Chicago v. O'Brien* (1884), 111 Ill. 532, 537.

We do not think that the ordinance here can properly be said to constitute a taxation scheme. Rather, what is involved is the imposition of regulatory provisions by way of the police power through an ordinance which requires persons in control of property abutting upon sidewalks to keep them clear of snow and ice. (See *Petterson* v. *City of Naperville* (1956), 9 Ill. 2d 233, 249.) Furthermore, when police power regulations are reasonable and adapted to the objects sought to be accomplished, they are not unconstitutional even though private property may be injured, interfered with, or damaged without the payment of compensation. (*Sherman-Reynolds, Inc. v. Mahin* (1970), 47 Ill. 2d 323, 328.) The court in *Sherman-Reynolds* upheld provisions of the Illinois Income Tax Act which require employers to withhold tax from compensation paid to their employees. The withholding provisions were upheld even though an employer's compliance required it to advance, out of its own property, substantial sums for necessary equipment, supplies, personnel and professional advice and assistance.

From the foregoing discussion, it becomes evident that *Gridley* and *O'Brien* should not be blindly adhered to. More recent developments have witnessed a general increase in the scope of the police power, as well as considerable erosion of the direct underpinnings of those two cases. Moreover, our research discloses only two other reported decisions in accord with *Gridley* and *O'Brien.* (*State v. Jackman* (1898), 69 N.H. 318, 41 A. 347; *McGuire v. District of Columbia* (1904), 24 App. D.C. 22.) The great majority of jurisdictions have instead upheld ordinances similar to that involved here, many of them expressly declining to follow the two Illinois decisions. (*In re Appeal of Goddard* (1835), 33 Mass. (16 Pick.) 504; *Village of Carthage v. Frederick* (1890), 122 N.Y. 268, 25 N.E. 480; *Town of Clinton v. Welch* (1896), 166 Mass. 133, 43 N.E. 1116; *City of Lincoln* v. *Janesch* (1902), 63 Neb. 707, 89 N.W. 280 (repair of sidewalks); *State v. McMahon* (1903), 76 Conn. 97, 55 A. 591; *City of Helena v. Kent* (1905), 32 Mont. 279, 80 P. 258; *State ex rel. Egan v. McCrillis* (1907), 28 R.I. 165, 66 A. 301; *Kansas City v. Holmes* (1918), 274 Mo. 159, 202 S.W. 392; *State v. Small* (1927), 126 Me. 235, 137 A. 398; *Rich v. Rosenshine* (1947), 131 W. Va. 30, 45 S.E.2d 499; *State* v. *Giacchetto* (1979), 166 N.J. Super. 351, 399 A.2d 1031.) Based upon the development of the police power in Illinois and upon what we consider to be the better reasoning of cases from other jurisdictions that have upheld similar legislation, *Gridley* and *O'Brien* are hereby overruled.

It cannot be disputed that keeping sidewalks free from snow and ice is closely related to and in furtherance of the public's welfare. The fact that this court has not seen fit to impose a common law duty on municipalities to keep their streets and sidewalks clear of snow and ice (*Lansing v. County of McLean* (1978), 69 Ill. 2d 562) does not mean that those same municipalities cannot undertake by ordinance to require that sidewalks be kept clear of snow and ice in the interest of the public safety and welfare. Neither can it be said that the means chosen to accomplish the object of the legislation—requiring individuals to keep

clear the portion of the sidewalk abutting the property under their control—is so arbitrary or unreasonable as to constitute an invalid exercise of the police power. The burden is not so manifestly disproportional or unrelated to a legitimate classification as to amount to unjust discrimination. The expenditure of time and effort, and perhaps expense, which the ordinance exacts is incidental to the enjoyment of property, just as are many other burdens, such as those mentioned earlier, imposed by the legislative branch. Furthermore, the law does not demand absolute equality. By making the requirement proportional to the length of property frontage, the legislation, in our opinion, is in compliance with constitutional requirements.

Defendant's final objection to the legislation is that it unconstitutionally imposes absolute liability for its violation. Defendant cites no constitutional provision in support, and we find that his argument is without merit.

For the foregoing reasons, the judgment of the circuit court of Jackson County is reversed, and the cause is remanded for further proceedings.

Judgment reversed;
cause remanded.

MR. JUSTICE WARD, dissenting:

I dissent. Although the language of the majority's opinion is couched in terms of the police power, I find it more appropriate in considering this question of compulsion to identify the problem as one of due process, as it was in *City of Chicago v. O'Brien* (1884), 111 Ill. 532, 537. The majority's opinion, by speaking only in terms of police power, tends to mute the issue of due process, which is stated very strongly and explicitly in *O'Brien*. With regard to a snow-removal ordinance of the city of Chicago, the court in *O'Brien* made this observation:

> "The lot owner is held responsible solely and simply for the accident of owning property near the nuisance. He may have no more actual control of the street, or

> necessity to use it, than if his property were miles away; still, he is held responsible for a result he could not control, and to the production of which he did not even theoretically contribute. The *gist* of the whole argument is merely that it is convenient to hold him responsible. It is not perceived why it would not be equally convenient to hold him responsible for the entire police government of so much of the street." 111 Ill. 532, 537.

The majority refers to *Petterson v. City of Naperville* (1956), 9 Ill. 2d 233, and *Krughoff v. City of Naperville* (1977), 68 Ill. 2d 352, as supporting its position. In those cases a developer was required to construct facilities or to contribute land or money to alleviate conditions created by his proposed development. The abutting owner is not in that position. In some cases, though by no means all, the owner may use the sidewalk in front of his property more frequently than do members of the general public, but he has, of course, no right to its exclusive use, and unlike the subdivider he has not created the situation which he is called upon to correct.

In *Lansing v. County of McLean* (1978), 69 Ill. 2d 562, this court recently reaffirmed the doctrine of *Strappelli v. City of Chicago* (1939), 371 Ill. 72, that a municipality is not liable in tort for iujuries arising out of the failure of the municipality to remove a natural accumulation of snow from the street or sidewalk. We noted in *McLean* that a landowner enjoys the same freedom from liability with respect to his own property. (69 Ill. 2d 562, 569-72.) The majority decision here results in an anomalous situation in that it approves the imposition of a duty upon the abutting owner with respect to the municipality's property, that is, the sidewalk, to which the municipality itself is not subject. Further, and oddly, it imposes upon the owner a twofold liability: if, on the one hand, he fails to remove the snow, then in addition to suffering a fine, he may be exposed to a suit for civil damages, since violation of an ordinance may be regarded as creating a cause of action in

tort. If, on the other hand, the owner does attempt to comply with the ordinance, he is exposed to the possibility of an action charging him with having negligently created a condition, such as ice on a cleared walk or a pile of snow, which injured the plaintiff. *Cf. Riccitelli v. Sternfeld* (1953), 1 Ill. 2d 133.

To be valid, a regulation made under the police power must be "reasonable and adapted to the scope and object sought to be accomplished." (*Sherman-Reynolds, Inc. v. Mahin* (1970), 47 Ill. 2d 323, 328.) If, as the majority now holds, an ordinance requiring an owner to remove snow from the sidewalk is not invali*d per se*, it will still be necessary, of course, that the provisions of such an ordinance be reasonable.

The majority's opinion does no more than to state simply and generally the conclusion that the ordinance here is not an unconstitutional exercise of the police power. I consider the provision requiring the owner or other person to clear a 30-inch path within 24 hours "after the cessation of any fall of snow, sleet or freezing rain" to be, in the weather area involved here, uncertain, vague, and not reasonably susceptible to determination by the persons affected. An ordinance or statute of this character must of course be clear and definite in the obligation that it imposes, and reasonably capable of being observed. The ordinance here cannot be said to satisfy that requirement, especially when the consequence of a violation may be the creation of a civil cause of action against the landowner.

MR. JUSTICE CLARK joins in this dissent.

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT
JACKSON COUNTY, ILLINOIS

No. 79-OV-59

THE CITY OF CARBONDALE,
a municipal corporation,

Plaintiff,

v.

JOHN BREWSTER,

Defendant.

DECISION

This matter coming on for hearing on the Defendant's Motion to Dismiss and the City's Motion to Strike the Motion, and the Court having been supplied with legal authority by both parties, and having considered the arguments of counsel, it is Hereby Ordered that the Defendant's Motion to Dismiss is granted and the City's Motion is, accordingly denied.

The Court has reflected upon the various arguments raised by the parties with regard to this rather unique legislation, wherein private citizens are required to contribute services to maintain the public way. It is contended by the defendant that this burden violates the Federal Constitution. The City has denied this argument and directed the Court's attention to numerous cases in other jurisdictions which have upheld the validity of such ordinances. Rather than deal with the merits of these arguments, the Court has concentrated its attention upon Illinois decisions in this field in the leading Illinois decision of Gridley vs. Bloomington 84 Ill. 554, 1878 the Court

considered a municipal ordinance requiring, as here, the citizen to remove snow from the public right of way. The Court concluded that such an ordinance (which was apparently predicated upon statutory authority which preceded Chapter 24 Ill. Rev. Stat. Sec. 11-80-13) was invalid. That decision determined that neither taxing authority nor the police power justified such legislation. Subsequently, in City of Chicago vs. Crosby, ... Ill. 538 (1884) and in City of Chicago vs. McDonald, 111 Ill. App. 436 (1903) the Gridley Case, Supra, was cited as controling authority.

The City argues that age has undermined the reasoning of the Gridley decision and that it is no longer controling law. It points out how police powers have expanded generally. However, as long as the Gridley decision stands it seems that its results, if not its reasoning, should be followed.

Accordingly, it is this Court's conclusion that such legislation whether adopted by the State or a Home Rule Municipality flies in the face of controling judicial decisions and is, therefore, invalid.

ENTER: /s/ Brocton Lockwood
Associate Circuit Judge

Dated: 2/9/79

IN THE
SUPREME COURT OF ILLINOIS

No. 51711

CITY OF CARBONDALE,
a municipal corporation,

Appellee,

vs.

JOHN BREWSTER,

Appellant.

Appeal from Circuit Court of Jackson County, No. 79-OV-59
Honorable BROCTON LOCKWOOD, *Judge Presiding*

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that defendant JOHN BREWSTER, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois, reversing the dismissal of the complaint, entered in this action December 20, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: March 12, 1980.

/s/ Edward J. Kionka
632 North Main Street
Columbia, Illinois 62236
(618) 281-7186
Counsel for Appellant
John Brewster

PROOF OF SERVICE

Edward J. Kionka, attorney for appellant John Brewster, hereby certifies that he served a true copy of this Notice of Appeal on counsel for appellee City of Carbondale by depositing it in the United States Mail at Columbia, Illinois, on March 12, 1980, with first class postage fully prepaid, and addressed to the address of said counsel as follows:

John Womick
Attorney at Law
609 East College
Carbondale, IL 62901

This constitutes service on all parties required to be served.

/s/ Edward J. Kionka

[Filed in the Illinois Supreme Court on March 12, 1980, and also in the Circuit Court of Jackson County, Illinois, on March 13, 1980.]